

## § 39.1

## 17 CFR Ch. I (4–1–16 Edition)

- 39.35 Default rules and procedures for uncovered credit losses or liquidity shortfalls (recovery) for systemically important derivatives clearing organizations and subpart C derivatives clearing organizations.
- 39.36 Risk management for systemically important derivatives clearing organizations and subpart C derivatives clearing organizations.
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APPENDIX A TO PART 39—FORM DCO DERIVATIVES CLEARING ORGANIZATION APPLICATION FOR REGISTRATION

APPENDIX B TO PART 39—SUBPART C ELECTION FORM

AUTHORITY: 7 U.S.C. 2, 7a–1, and 12a; 12 U.S.C. 5464; 15 U.S.C. 8325.

SOURCE: 76 FR 69430, Nov. 8, 2011, unless otherwise noted.

### Subpart A—General Provisions Applicable to Derivatives Clearing Organizations

#### § 39.1 Scope.

The provisions of this subpart A apply to any derivatives clearing organization as defined under section 1a(15) of the Act and §1.3(d) of this chapter which is registered or deemed to be registered with the Commission as a derivatives clearing organization, is required to register as such with the Commission pursuant to section 5b(a) of the Act, or which voluntarily applies to register as such with the Commission pursuant to section 5b(b) or otherwise.

#### § 39.2 Definitions.

For the purposes of this part:

*Activity with a more complex risk profile* includes:

(1) Clearing credit default swaps, credit default futures, or derivatives that reference either credit default swaps or credit default futures and

(2) Any other activity designated as such by the Commission pursuant to § 39.33(a)(3).

*Back test* means a test that compares a derivatives clearing organization's initial margin requirements with historical price changes to determine the extent of actual margin coverage.

*Customer* means a person trading in any commodity named in the definition of commodity in section 1a(9) of the Act or in §1.3 of this chapter, or in any swap as defined in section 1a(47) of the Act or in §1.3 of this chapter; *Provided, however*, an owner or holder of a house account as defined in this section shall not be deemed to be a customer within the meaning of section 4d of the Act, the regulations that implement sections 4d and 4f of the Act and §1.35 of this chapter, and such an owner or holder of such a house account shall otherwise be deemed to be a customer within the meaning of the Act and §§1.37 and 1.46 of this chapter and all other sections of these rules, regulations, and orders which do not implement sections 4d and 4f of the Act.

*Customer account* or *customer origin* means a clearing member account held on behalf of customers, as that term is defined in this section, and which is subject to section 4d(a) or section 4d(f) of the Act.

*Depository institution* has the meaning set forth in section 19(b)(1)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)).

*House account* or *house origin* means a clearing member account which is not subject to section 4d(a) or 4d(f) of the Act.

*Key personnel* means derivatives clearing organization personnel who play a significant role in the operations of the derivatives clearing organization, the provision of clearing and settlement services, risk management, or oversight of compliance with the Act and Commission regulations and orders. Key personnel include, but are not limited to, those persons who are or perform the functions of any of the

following: chief executive officer; president; chief compliance officer; chief operating officer; chief risk officer; chief financial officer; chief technology officer; and emergency contacts or persons who are responsible for business continuity or disaster recovery planning or program execution.

*Stress test* means a test that compares the impact of potential extreme price moves, changes in option volatility, and/or changes in other inputs that affect the value of a position, to the financial resources of a derivatives clearing organization, clearing member, or large trader, to determine the adequacy of the financial resources of such entities.

*Subpart C derivatives clearing organization* means any derivatives clearing organization, as defined in section 1a(15) of the Act and § 1.3(d) of this chapter, which:

(1) Is registered as a derivatives clearing organization under section 5b of the Act;

(2) Is not a systemically important derivatives clearing organization; and

(3) Has become subject to the provisions of subpart C of this part, pursuant to § 39.31.

*Systemically important derivatives clearing organization* means a financial market utility that is a derivatives clearing organization registered under section 5b of the Act, which is currently designated by the Financial Stability Oversight Council to be systemically important and for which the Commission acts as the Supervisory Agency pursuant to 12 U.S.C. 5462(8).

*U.S. branch or agency of a foreign banking organization* means the U.S. branch or agency of a foreign banking organization as defined in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

*Trust company* means a trust company that is a member of the Federal Reserve System, under section 1 of the Federal Reserve Act (12 U.S.C. 221), but that does not meet the definition of depository institution.

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### § 39.3 Procedures for registration.

(a) *Application procedures.* (1) An organization desiring to be registered as a derivatives clearing organization shall

file electronically an application for registration with the Secretary of the Commission in the format and manner specified by the Commission. The Commission will review the application for registration as a derivatives clearing organization pursuant to the 180-day timeframe and procedures specified in section 6(a) of the Act. The Commission may approve or deny the application or, if deemed appropriate, register the applicant as a derivatives clearing organization subject to conditions.

(2) *Application.* Any person seeking to register as a derivatives clearing organization, any applicant amending its pending application, or any registered derivatives clearing organization seeking to amend its order of registration (applicant), shall submit to the Commission a completed Form DCO, which shall include a cover sheet, all applicable exhibits, and any supplemental materials, including amendments thereto, as provided in the appendix to this part 39 (application). An applicant, when filing a Form DCO for purposes of amending its pending application or requesting an amendment to an existing registration, is only required to submit exhibits and updated information that are relevant to the requested amendment and are necessary to demonstrate compliance with the core principles affected by the requested amendment. The Commission will not commence processing an application unless the applicant has filed the application as required by this section. Failure to file a completed application will preclude the Commission from determining that an application is materially complete, as provided in section 6(a) of the Act. Upon its own initiative, an applicant may file with its completed application additional information that may be necessary or helpful to the Commission in processing the application.

(3) *Submission of supplemental information.* The filing of a completed application is a minimum requirement and does not create a presumption that the application is materially complete or that supplemental information will not be required. At any time during the application review process, the Commission may request that the applicant submit supplemental information in order for the Commission to process